




# **Headquarters Policy Flash**

**FLASH 2001-05**

DATE: February 9, 2001  
TO: Procurement Directors  
FROM: Office of Procurement and Assistance Policy, MA-51  
Office of Procurement and Assistance Management

SUBJECT: **Contractor Legal Management Requirements**

SUMMARY: The final rule entitled "Contractor Legal Management Requirements," was published in the *Federal Register* on January 18, 2001 (66 FR 4616). In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the *Federal Register* on January 24, 2001 (66 FR 7702), *the effective date of the rule has been temporarily delayed for 60 days from February 20, 2001, until April 23, 2001 (66 FR 8746).*



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Notwithstanding the delay in the effective date of the rule, this Flash provides a brief summary of the final rule, including significant DOE and contractor responsibilities required thereunder.

The final rule establishes new regulations at 10 CFR part 719 which address contractor legal management requirements. Conforming amendments are also made to the Department of Energy Acquisition Regulation (DEAR). The rule establishes requirements pertaining to legal costs to be reimbursed by the Department to its contractors at Government owned or leased facilities under cost reimbursement contracts exceeding \$100,000,000. The new regulation also applies to law firms and legal counsel retained by the Department for litigation or other legal services where the legal costs are expected to exceed \$100,000 (see 10 CFR sections 719.3-719.4).

#### **Department Counsel**

10 CFR section 719.2 defines *Department counsel* as the individual in the field office, or Headquarter's office, designated as the contracting officer's representative (COR) and point of contact for a contractor or a Department retained law firm or attorney for submission and approval of the legal management plan, advance approval of certain costs, and submission of a staffing and resource plan. The COR designation need only cover the purposes of 10 CFR part 719, but it is imperative that someone from the local counsel's office be designated as COR for each contractor covered by this regulation to perform the required functions and activities in this regulation.

Actions by Department counsel may not exceed the responsibilities and limitations as delegated by the contracting officer and this is reiterated in section 719.40(b).

#### **Contractor Submissions**

Contractor submissions to Department counsel required by the regulation include: a legal management plan within 60 days of execution of a contract; a staffing and resource plan for legal matters expected to exceed \$100,000; an annual budget for pending matters; copies of engagement letters; and information copies of subcontractor vouchers for legal costs.

#### **Advance Approvals**

10 CFR section 719.35 lists costs (many of which are otherwise allowable costs under the FAR cost principles) which require advance approval from Department counsel, unless Department counsel indicates that approval of a request may only be given by the contracting officer. If a contracting officer determines that approval for costs listed in section 719.35 may not be delegated to the COR, that issue should be addressed in the COR designation letter.

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Amendments made to the DEAR include the following:

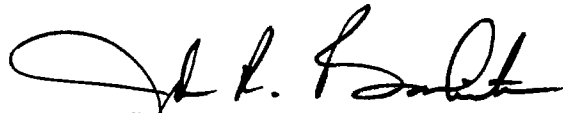
- ▶ Supplemental DOE coverage to the FAR cost principles at 48 CFR 31.205-19, Insurance and indemnification, and 48 CFR 31.205-33, Professional and consultant service costs, has been added.
- ▶ A new clause is prescribed for other than management and operating cost reimbursement contracts exceeding \$100,000,000 which involve work performed at a Department owned or leased site. The text of the clause is that contained in DEAR clause 970.5228-1, Insurance-Litigation and claims clause, as modified for non-M&O contracts now covered by the supplemental coverage set forth in 48 CFR 931.2. For DOE management and operating contracts, the clause at 970.5228-1 (also amended by the rule) continues to apply.

Contracting officers must apply these DEAR changes to:

- ▶ solicitations issued on or after the effective date of the rule (April 23, 2001);
- ▶ existing contracts that are extended in accordance with the Department's extend/compete policies and procedures (48 CFR 917.6, 48 CFR 970.1702-1(a), and internal guidance); and
- ▶ options exercised under competitively awarded management and operating contracts (48 CFR 970.1702-1(b)).

Contracting officers may, at their discretion, include these DEAR changes in solicitations issued before the effective date of the rule, provided award of the resulting contract(s) occurs on or after the effective date.

Procurement related questions concerning this regulation should be directed to Ms. Laura Fullerton at [laura.fullerton@hq.doe.gov](mailto:laura.fullerton@hq.doe.gov). Questions relating to the Department's legal management system should be directed to Ms. Anne Broker at [anne.broker@hq.doe.gov](mailto:anne.broker@hq.doe.gov).

  
John R. Bashista, Acting Director

cc: PPAG Members